

SEDGWICK, DETERT, MORAN & ARNOLD LLP
STEVEN ROLAND (Bar No. 108097)
AMBER RYE BRUMFIEL (Bar No. 215181)
One Market Plaza
Steuart Tower, 8th Floor
San Francisco, California 94105
Telephone: (415) 781-7900
Facsimile: (415) 781-2635

BONDURANT, MIXSON & ELMORE, LLP
RONAN P. DOHERTY (*Pro Hac Vice*)
CHRISTOPHER T. GIOVINAZZO (*Pro Hac Vic*)
1201 West Peachtree Street NW, Suite 3900
Atlanta, Georgia 30309
Telephone: (404) 881-4100
Facsimile: (404) 881-4111

Attorneys for Defendant and Counter-claimant
HOME DEPOT U.S.A., INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

B&O MANUFACTURING, INC.,

Plaintiff,

v.

THE HOME DEPOT U.S.A., INC.,

Defendant.

CASE NO. C07 02864 JSW

**STIPULATION AND ORDER OF
DISMISSAL OF ACTION WITH
PREJUDICE**

[FRCP 41(A)(1)]

AND RELATED COUNTERCLAIM

IT IS HEREBY STIPULATED, by and between the parties-in-interest to this
Action and Counterclaims, by and through their respective counsel, that the Action herein,
consisting only of the Complaint filed by plaintiff and counter-defendant B&O Manufacturing,
Inc. ("B&O") against defendant and counter-claimant Home Depot U.S.A., Inc. ("Home Depot")
and excluding the Counterclaims filed by Home Depot against B&O, be dismissed with prejudice
pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, each party to bear its own
attorneys' fees and costs. The Counterclaims remain pending and are stayed by operation of the

1 Bankruptcy Code pending further proceedings in U.S. Bankruptcy Court in relation to B&O's
2 July 23, 2008 Chapter 7 filing.

3 **IT IS SO AGREED AND STIPULATED.**

4 DATED: November 13 2008 SEDGWICK, DETERT, MORAN & ARNOLD LLP

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6 By: 

Amber Rye Brunell
Attorneys for Defendant and Counter-claimant
HOME DEPOT U.S.A. INC.

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9 DATED: November 13, 2008 LAW OFFICES OF MICHAEL C. FALLON

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11 By: 

Michael C. Fallon
Attorneys for Janina M. Elder, Chapter 7 Trustee for
B&O MANUFACTURING, INC., Plaintiff and Counter-
defendant

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14 Pursuant to stipulation of the parties, and Rule 41(a)(1) of the Federal Rules of
15 Civil Procedure, IT IS HEREBY ORDERED that the Action herein, consisting only of the
16 Complaint filed by B&O against Home Depot and excluding the Counterclaims filed by Home
17 Depot against B&O be, and hereby is, DISMISSED WITH PREJUDICE, each party to bear its
18 own attorneys' fees and costs. The Counterclaims remain pending and are stayed by operation of
19 the Bankruptcy Code pending further proceedings in U.S. Bankruptcy Court in relation to B&O's
20 July 23, 2008 Chapter 7 filing.

21 Dated: November 14, 2008


The Honorable Jeffrey S. White